

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Intervenor,

v.

CITY OF CHICOPEE,

Defendant.

CIVIL ACTION NO.

CONSENT DECREE

WHEREAS, the City of Chicopee, Massachusetts ("City," "Chicopee," or "Defendant") is authorized to discharge into navigable waters of the United States from its publicly-owned treatment works ("POTW") and Combined Sewer Overflows ("CSOs") in accordance with effluent limitations and conditions set forth in National Pollutant Discharge Elimination System ("NPDES") Permit No. MA0101508, issued on May 17, 2005;

WHEREAS, the City was authorized from October 29, 1995 through July 15, 2005 to discharge into navigable waters of the United States from its POTW and CSOs in accordance with effluent limitations and conditions set forth in NPDES Permit No. MA0101508, issued on September 29, 1995;

WHEREAS, plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint herewith, alleging that the City

has violated its NPDES Permits and Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, whenever the United States brings a civil enforcement action against a municipality under Section 309 of the CWA, 33 U.S.C. § 1319, Subsection (e) requires that the State in which the municipality is located shall be joined as a party;

WHEREAS, the Commonwealth of Massachusetts (the "Commonwealth"), on behalf of the Massachusetts Department of Environmental Protection ("DEP"), has filed an assented-to motion to intervene as a plaintiff in the action brought by the United States and has filed a complaint alleging that the City has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a); the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53 ("Massachusetts Act"); the federal NPDES Permits; and the state permits issued by DEP under the Massachusetts Act (said federal and state permits having been jointly issued on May 17, 2005 as a single permit, collectively, hereinafter the "Permit," and on September 29, 1995 as a single permit, collectively, hereinafter the "Previous Permit");

WHEREAS, the City has completed certain Phase 1 CSO Projects, in particular, the modification of CSO 4.2, construction of the sewer separation project in Drainage Area 22/25 (the Sandy Hill Area), and the modification of CSO 34.3, as described in Sections 7.4.4, 7.4.10 and 7.4.26 of the Draft LTCP and Section 2 of the Phase 1 Waiver Request;

WHEREAS, entry of this Consent Decree by the Court will resolve all claims in the complaint of the United States and the complaint of the Commonwealth (collectively, "Complaints"); and

WHEREAS, the United States, the Commonwealth, and the City (collectively, the "Parties") agree, without admission of facts or law except as expressly stated herein, that

settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the dispute, and the Parties consent to the entry of this Consent Decree;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM

1. The Complaints state claims upon which relief can be granted against the Defendant pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. The Commonwealth's Complaint also states claims upon which relief can be granted pursuant to Section 42 of the Massachusetts Act, M.G.L. c. 21, § 42.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, 1355, and 1367 and under the doctrine of pendent jurisdiction. This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395. The City waives all objections it might have raised to such jurisdiction or venue.

III. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon the City and its officers, directors, agents, employees acting in their official capacities, its successors, and assigns. The City shall provide a copy of this Consent Decree to all contractors and consultants retained to perform any obligation required by this Consent Decree on behalf of the City, and shall require that contractors and consultants provide a copy of this Consent Decree to their subcontractors. Such parties shall be deemed agents for the purposes of this Consent Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA or in regulations promulgated under the CWA shall have the meaning ascribed to them in the CWA or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply.

a. The phrases "Approval by EPA and DEP" and "Approved by EPA and DEP" shall mean the issuance of one joint, written approval document from both EPA and DEP approving, approving with conditions, and/or modifying a submission in accordance with Section XI.

b. The phrases "Approval by DEP" and "Approved by DEP" shall mean the issuance of a written approval document from DEP approving, approving with conditions, and/or modifying a submission in accordance with Section XI.

c. "Collection System" shall mean the wastewater collection, storage and transmission system owned or operated by the City, including, but not limited to, all devices, minisystems, pump stations, force mains, gravity sewer lines, manholes, and appurtenances.

d. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

e. "Date of Lodging" shall mean the day this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Massachusetts.

f. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or

Commonwealth of Massachusetts holiday, the period shall run until the close of business of the next working day.

g. “Draft LTCP” or “DLTCP” shall mean the “Draft Long-Term CSO Control Plan and Draft Environmental Impact Report (DEIR) for the Combined Sewer Overflow Project,” submitted by Chicopee on December 28, 2001.

h. “Flow” shall mean all wastewaters conveyed by any portion of the Collection System.

i. “Infiltration” shall mean the water that enters the Collection System (including sewer service connections) from the ground through such means as, but not limited to, defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, Inflow.

j. “Inflow” shall mean all water that enters the Collection System (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, Infiltration.

k. “Infiltration/Inflow” shall mean the total quantity of water from both Infiltration and Inflow without distinguishing the source.

l. “Phase 1 Waiver Request” shall mean the “Notice of Project Change - Phase 1 Waiver Request,” submitted by Chicopee in October 2002.

m. “WPCF Secondary Treatment Capacity” shall mean all flows up to 25 million gallons per day (“mgd”) entering Chicopee’s Water Pollution Control Facility which

would receive full secondary treatment; but, the WPCF High Flow Management Plan, to be submitted by the City and reviewed and approved by EPA and DEP in accordance with Section VIII, may revise this threshold amount.

V. OBJECTIVES

5. It is the express purpose of the Parties in entering into this Consent Decree to require the City take all measures necessary to achieve and maintain compliance with the CWA, the Massachusetts Act, the Permit, any joint federal NPDES and state permit that may be issued to the City in the future ("Future Permit"), and any applicable federal and state regulations.

6. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound engineering practices, and, as applicable, consistent with (a) EPA's "Handbook: Sewer System Infrastructure Analysis and Rehabilitation," EPA/625/6-91/030, October 1991; (b) EPA's "Handbook for Sewer System Evaluation and Rehabilitation," EPA/430/9-75/021, December 1975; (c) the DEP document entitled "Guidelines for Performing Infiltration/Inflow Analysis and Sewer System Evaluation Survey," revised January 1993; and (d) the currently effective edition of "TR 16: Guides for the Design of Wastewater Treatment Works."

VI. CIVIL PENALTY

7. The City shall pay a civil penalty in the amount of one hundred fifteen thousand dollars (\$115,000) ("Civil Penalty") in satisfaction of the claims for civil penalties alleged in the United States' and the Commonwealth's Complaints. The City shall make payment of the Civil Penalty as follows:

a. The City shall make payment to the United States in the amount of fifty seven thousand five hundred dollars (\$57,500) in satisfaction of the United States' claims. The

City shall make payment by electronic funds transfer in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, Springfield, Massachusetts. The costs of such electronic funds transfer shall be the responsibility of the City. The City shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the EPA and the United States Department of Justice as specified in Paragraph 46. Payment of the civil penalty shall be made within fifteen (15) days after the City receives notice of entry of the Consent Decree. If the City fails to tender payment within fifteen (15) days of receiving notice of entry of this Consent Decree, then interest shall accrue on the debt to the United States, from the date of entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

b. The City shall make payment to the Commonwealth in the amount of fifty seven thousand five hundred dollars (\$57,500) in satisfaction of the Commonwealth's claims. The City shall make payment to the Commonwealth in the form of a certified or cashier's check made payable to "Commonwealth of Massachusetts" and shall send such payment to the Office of the Attorney General as specified in Paragraph 46. Payment of the civil penalty shall be made within fifteen (15) days after the City receives notice of entry of the Consent Decree. If the City fails to tender payment within fifteen (15) days of receiving notice of entry of this Consent Decree, then interest shall accrue on the debt to the Commonwealth of Massachusetts, from the date of entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

VII. REMEDIAL MEASURES

A. Phase 1 CSO Projects

8. *Chlorination of WPCF Bypass*—The City shall construct and operate a system to provide for disinfection of the wastewater bypassed around secondary treatment at the City's

Water Pollution Control Facility (“WPCF”) during wet-weather conditions in accordance with the plans and specifications, dated July 2004, submitted by the City to DEP, as approved by DEP in its approval letter dated September 3, 2004. A copy of DEP’s September 3, 2004 approval letter is attached as Appendix A, and is incorporated herein.

a. On or before July 31, 2006, the City shall commence operation of the disinfection system to disinfect wastewater bypassed around the secondary treatment system at the WPCF.

b. Within three (3) months of the deadline for commencing operation of the disinfection system, the City shall operate the disinfection system in accordance with the interim limits and monitoring requirements set forth in Appendix B.

9. *CSO 9 Modification*—The City shall modify, construct and operate the Paderewski Pump Station CSO 9, as described in Section 7.4.9 of the DLTCP and Section 2 of the Phase 1 Waiver Request, in accordance with the plans and specifications, dated October 2003, submitted by the City to DEP, as approved by DEP in its approval letter dated December 8, 2003. A copy of DEP’s December 8, 2003 approval letter is attached as Appendix C, and is incorporated herein. On or before July 31, 2006, the City shall commence operation of the Paderewski Pump Station Modification.

10. *Area 7 Satellite Treatment Facility*—The City shall construct and operate a satellite treatment facility at CSO 7.1 (Drainage Area 7—the Jones Ferry area) to provide screening and disinfection of combined sewer discharges prior to discharge to the Connecticut River. This project is described in Section 7 of the Draft LTCP and subsequently refined in Section 2 of the Phase 1 Waiver Request.

a. On or before April 1, 2006, the City may submit for review and comment by DEP the 35% design construction plans and specifications for this Drainage Area 7 project.

The failure or delay of DEP to provide comments shall not alter or affect the City's obligation to submit the final construction plans and specifications pursuant to Paragraph 10(b) below.

b. On or before October 13, 2006, the City shall submit for review and approval by DEP the final design construction plans and specifications for this Drainage Area 7 project.

c. On or before April 1, 2007, the City shall advertise the project for bid.

d. Within four months of the deadline for advertising the project for bid, the City shall award a contract for the construction of the Drainage Area 7 project.

e. Within two (2) years of the deadline for awarding the construction contract, the City shall commence operation of the Jones Ferry satellite treatment facility in accordance with the plans and specifications submitted in accordance with Paragraph 10(b), above, as approved by DEP.

f. Within three (3) months of the deadline for commencing operations of the Jones Ferry satellite treatment facility, the City shall operate the facility in accordance with the interim limits and monitoring requirements as set forth in Appendix D.

11. *Area 1 Separation*—The City shall construct facilities necessary to provide separate conveyance systems for wastewater and storm water in Drainage Area 1 as described in Section 7.4.1 of the DLTCP and Section 2 of the Phase 1 Waiver Request.

a. On or before April 1, 2006, the City may submit for review and comment by DEP and EPA design drawings for construction of the Area 1 Separation project and modification of the drainage system. EPA and DEP may provide comment on the design

drawings. The failure or delay of EPA and/or DEP to provide comments shall not alter or affect the City's obligation to submit the final construction plans and specifications pursuant to Paragraph 11(b) below.

b. On or before September 1, 2006, the City shall submit for review and approval by DEP final design construction plans and specifications to eliminate unauthorized discharges from the collection system in Drainage Area 1.

c. On or before April 1, 2007, the City shall advertise the project for bid.

d. Within three (3) months of the deadline for advertising the project for bid, the City shall award a contract for construction of the Area 1 Separation project.

e. Within twenty-four (24) months of the deadline for awarding the project contract, the City shall commence operation of the facilities necessary to eliminate the unauthorized discharges from the collection system in the Drainage Area in accordance with the plans and specifications submitted in accordance with Paragraph 11(b), above, as approved by DEP.

B. Long-Term CSO Control Plan

12. By March 1, 2006, Chicopee shall submit, for review and approval by EPA and DEP, a work plan for the completion of the Long-Term CSO Control Plan ("LTCP Work Plan"). In preparing the LTCP Work Plan, the City shall review: the Draft LTCP; the questions and comments on the Draft LTCP raised by EPA and DEP, in their March 7, 2002 and February 15, 2002 letters, respectively, and the questions and comments on the Phase 1 Waiver Request raised by DEP in its November 12, 2002 letter. Within eight (8) months of approval by EPA and DEP of the LTCP Work Plan, Chicopee shall submit, for review and approval by EPA and DEP, a Long-Term CSO Control Plan that evaluates a full range of alternatives, including phased

approaches, for addressing CSO outfalls that will remain active following completion of the Phase 1 CSO Projects as described and required in Section VII.A. Each alternative must include a schedule for achieving as soon as practicable, as evaluated in accordance with EPA's guidance entitled "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development" (EPA 832-B-97-004, March 1997) or subsequently-issued guidance, the design, construction and operation of the alternative's remedial measures. Chicopee shall implement the alternative approved by EPA and DEP. The approved Long-Term CSO Control Plan shall ensure that the City's CSOs comply with the requirements of the state water quality standards, the City's Permit or Future Permit, the CWA, and the Massachusetts Act. In no event shall the schedule for construction extend beyond 2026, unless this date is changed by modification of the Consent Decree pursuant to Paragraph 53.

a. The City shall prepare the Long-Term CSO Control Plan in a manner consistent with EPA's "Combined Sewer Overflow (CSO) Control Policy," 59 Fed. Reg. 18688, April 19, 1994, and shall include the elements described in Appendix E. Of particular importance, the City shall, in the Long-Term CSO Control Plan, evaluate control options for a reasonable range of alternatives, *e.g.*, controls that would be necessary to achieve complete elimination, zero overflows per year, an average of one to four overflow events per year, and an average of five to eight overflow events per year. For each design storm, the City shall estimate the frequency of activation and annual volume of discharge remaining at each CSO outfall, and shall evaluate the impact of the cost of the control options on the average sewer user charge.

b. In the event that an alternative approved by EPA and DEP is for another phase of CSO projects (Phase 2) to be performed following the completion of Phase 1, Chicopee shall submit no less than two years in advance of Phase 2's scheduled construction completion

date, for review and approval by EPA and DEP, a proposed plan for CSO projects to be performed following the completion of Phase 2. If subsequent plan(s) approved by EPA and DEP are for additional phase(s) of work, then Chicopee shall submit, on or before two years in advance of these phase(s)' scheduled construction completion date, for review and approval by EPA and DEP, further plan(s) for CSO projects to be performed following the completion of the phase(s) approved by EPA and DEP.

VIII. WPCF HIGH FLOW MANAGEMENT PLAN

13. By December 1, 2006, the City shall submit a High Flow Management Plan ("HFMP") for review and approval by EPA and DEP. The HFMP shall include: 1) an evaluation of the maximum flow that can be provided full secondary treatment by the WPCF in compliance with the NPDES Permit; 2) facility management procedures, including for the operation of the Paderewski Street Pump Station, that provide the highest feasible level of BOD, TSS, and bacteria removal by the WPCF's secondary treatment system while maximizing pollutant removal and disinfection efficiency for flows that may bypass a portion of the WPCF's treatment process; and 3) a monitoring protocol that demonstrates the effectiveness of wet weather treatment operations by monitoring i) effluent receiving full secondary treatment, ii) partially treated effluent bypassed around secondary treatment, and iii) the combined effluent.

14. Within three (3) months of the deadline for commencing operations of the Jones Ferry satellite treatment facility, the City shall submit to EPA and DEP for review and approval an amended HFMP to include a section on operating the satellite treatment facility to reduce untreated CSO discharges from CSO 7.1 to the maximum extent feasible. The amended HFMP shall include procedures for returning wastewater stored in the Jones Ferry satellite treatment facility back into the City's sewer system upon the conclusion of each wet weather event.

15. The City shall operate its WPCF and CSOs in accordance with the HFMP (or, if applicable, the amended HFMP) as approved by the EPA and DEP.

IX. INTERIM CONDITIONS

16. The City shall maintain full compliance with the effluent limitations, monitoring requirements, and other conditions specified in its Permit (or, if applicable, Future Permit) and shall comply with the interim limits and reporting requirements in Paragraphs 8, 10 and 15 above. For purposes of reporting mass discharges of pollutants from the WPCF limited by the NPDES Permit, only those quantities of these pollutants discharged from the WPCF secondary treatment process shall be included. The mass discharge of pollutants from the WPCF Bypass facility identified in Paragraph 8 shall not be considered in evaluating the WPCF compliance with its NPDES Permit mass discharge limits.

17. At all times, the daily maximum limit for total residual chlorine and sampling shall be in accordance with the Permit, or, if applicable any Future Permit. The City shall not bypass the WPCF secondary treatment process unless the flow rate entering the WPCF exceeds the WPCF Secondary Treatment Capacity.

X. REPORTS ON COMPLIANCE

18. Beginning on the fifteenth day of the calendar quarter following entry of this Consent Decree, and until completion of construction of all the Remedial Measures in Section VII, the City shall report to EPA and DEP on its compliance with Section VII every three months. Each progress report submitted under this Paragraph shall:

a. Describe activities undertaken during the previous calendar quarter ("reporting period") directed at achieving compliance with this Consent Decree;

b. Identify all plans, reports, and other deliverables required by this Consent Decree that the City completed and submitted during the reporting period;

c. Describe the expected activities to be taken during the calendar quarter following the reporting period in order to achieve compliance with this Consent Decree; and

d. Identify any noncompliance with this Consent Decree's requirements, including the schedule set forth in the Long-Term CSO Control Plan as approved by EPA and DEP. If noncompliance is reported, notification should include the following information:

- (i) A description of the noncompliance;
- (ii) A description of any actions taken or proposed by the City to comply with any elapsed schedule requirements;
- (iii) A description of any factors that explain or mitigate the noncompliance; and
- (iv) An approximate date by which the City will perform the required action.

The reporting requirements set forth in this Section do not relieve the City of its obligation to submit any other reports or information as required by state, federal or local law.

XI. REVIEW AND APPROVAL

19. After review of any plan, report or other item that is required to be submitted for approval by EPA and/or DEP pursuant to this Consent Decree, EPA and/or DEP, as appropriate, shall in writing: (a) approve, in whole or in part, the submission; (b) approve, in whole or in part, the submission upon specified conditions; (c) modify, in whole or in part, the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the City modify the submission; or (e) any combination of the above.

20. In the event of approval, approval upon conditions, and/or modification by EPA and/or DEP, pursuant to Paragraph 19(a), (b), or (c), the plan, report, or other item, or portion

thereof, as approved, approved with conditions, and/or modified by EPA and/or DEP shall be enforceable under this Consent Decree, and the City shall implement such plan, report, or other item, or portion thereof, in accordance with the approval, approval with conditions, and/or modification issued by EPA and/or DEP.

21. In the event that EPA and/or DEP modify the submission, or portion thereof, to cure the deficiencies pursuant to Paragraph 19(c), EPA and the Commonwealth retain their right to seek Stipulated Penalties for the City's submission of a deficient plan, report or other item, or portion thereof, which shall constitute an unapprovable submission subject to Stipulated Penalties, as provided in Section XII.

22. Upon receipt of a written notice of disapproval pursuant to Paragraph 19(d), the City shall, within thirty (30) days or such other time as the Parties agree in writing, correct the deficiencies and resubmit the plan, report, or other item, or portion thereof, for approval.

23. Any resubmitted plan, report, or other item, or portion thereof, shall be subject to EPA's and/or DEP's review and approval as provided under this Section. If the City fails to resubmit a plan, report, or other item, or portion thereof after a disapproval, or if, upon resubmission, the plan, report, or other item, or portion thereof, is disapproved or modified by EPA and/or DEP, the City shall be deemed to have failed to submit such plan, report, or other item, or portion thereof, timely and adequately, unless the city invokes the Dispute Resolution procedures set forth in Section XIV and EPA's and DEP's action is overturned.

24. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 19(d), the City shall proceed, at the direction of EPA and/or DEP, as appropriate, to take any action required by any non-deficient portion of the submission. Implementation of any

non-deficient portion of a submission shall not relieve the City of any liability for Stipulated Penalties under Section XII (Stipulated Penalties) for the deficient portions.

XII. STIPULATED PENALTIES

25. The City shall pay Stipulated Penalties to the United States and the Commonwealth for violations of this Consent Decree, as set forth below:

a. Five hundred dollars (\$500) per violation per day for each day the City is late in submitting a report required by Paragraph 18 of this Consent Decree, fails to provide the certification required by Paragraph 47, or is late in delivering the civil penalty payment required by Paragraph 7.

b. For every day that the City fails to meet the requirements of Section VII (Remedial Measures) of this Consent Decree, including but not limited to, submitting an approvable plan, report, or other item, other than a report required by Paragraph 18, or implementing remedial requirements in a plan, report, or other item approved by EPA and/or DEP, the City shall pay a penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1000	1 st through 10 th day
\$ 2500	11 th through 20 th day
\$ 5000	21 st day and beyond.

c. For each day that the City fails to comply with the Interim Conditions under Section IX of this Consent Decree, it shall pay a penalty of one thousand dollars (\$1000).

26. Stipulated Penalties shall automatically begin to accrue on the first day the City fails to meet any of the schedules required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue each day until the City achieves compliance with such schedule, obligation or requirement.

27. Following the United States' and/or the Commonwealth's determination that the Defendant has failed to comply with a requirement of this Consent Decree, the United States and/or the Commonwealth may give the Defendant written notification of the same and describe the noncompliance. The United States and/or the Commonwealth may send the Defendant a written demand for the payment of the Stipulated Penalties. However, the Stipulated Penalties shall accrue as provided in the preceding Paragraph regardless of whether the United States or the Commonwealth has notified the Defendant of a violation or demanded payment of Stipulated Penalties.

28. The City shall pay Stipulated Penalties as specified in this Section by delivering the payments to the United States and the Commonwealth, in equal amounts, within thirty (30) days of the date of a demand for payment of Stipulated Penalties, in accordance with the instructions set forth as follows:

a. Stipulated Penalty payments to the United States as specified in this Section shall be made by electronic funds transfer in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, Springfield, Massachusetts. The costs of such electronic funds transfer shall be the responsibility of the City. The City shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the EPA and the United States Department of Justice as specified in Paragraph 46.

b. Stipulated Penalty payments to the Commonwealth shall be made by certified or cashier's check payable to the "Commonwealth of Massachusetts" and shall be delivered to the Office of the Attorney General as specified in Paragraph 46. Payments shall be accompanied by a reference to this Consent Decree.

c. In the event that a Stipulated Penalty payment is not made on time to the United States or the Commonwealth, such penalty (or portion thereof) shall be subject to interest at the statutory judgment rate set forth at 28 U.S.C. § 1961, for each day of late payment or non-payment. Nothing in this Paragraph shall be construed to limit the United States or the Commonwealth from seeking any remedy otherwise provided by law for failure of the City to pay any Stipulated Penalties.

29. The Stipulated Penalties set forth above shall be in addition to any other remedies, sanctions, or penalties which may be available by reason of the City's failure to comply with the requirements of this Consent Decree. The United States and the Commonwealth expressly reserve any and all legal and equitable remedies, including contempt sanctions, which may be available to enforce the provisions of this Consent Decree.

XIII. FORCE MAJEURE

30. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of the City, including its contractors and subcontractors, that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding the City's best efforts to avoid the delay. Stipulated Penalties shall not be due for the number of days of noncompliance caused by a Force Majeure event as defined in this Section, provided that the City complies with the terms of this Section. Examples of events that are not Force Majeure events include, but are not limited to, normal inclement weather, unanticipated or increased costs or expenses of work, the financial difficulty of the City to perform such work, acts or omissions attributable to the City's contractors or representatives, and the failure of the City or the City's contractors or representatives to make complete and timely application of any required approval or permit.

31. If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the City shall notify EPA and DEP within ninety-six (96) hours after the City first knew or should have known that the event might cause a delay. Within ten (10) working days thereafter, the City shall provide to EPA and DEP, at the addresses specified in Paragraph 46, a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by the City to prevent or minimize the delay, a proposed schedule for the implementation of such measures, and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Notwithstanding the foregoing, the City shall notify EPA and DEP orally within twenty-four (24) hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA and DEP within seventy-two (72) hours. Failure to give timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

32. If the Parties agree that a delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual agreement of the Parties for a period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

33. If the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance caused by such event, the City may initiate the Dispute Resolution process set forth in Section XIV. If the City does

not initiate the Dispute Resolution process set forth in Section XIV, then the City shall be deemed to have waived any Force Majeure claims or any rights to initiate Dispute Resolution with regard to such claims.

34. Delay in performance of any obligation under this Consent Decree shall not automatically justify or excuse delay in complying with any subsequent obligation or requirement of this Decree.

35. Failure of the City to obtain any state or federal grants or loans shall not be considered a Force Majeure event under this Consent Decree.

XIV. DISPUTE RESOLUTION

36. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the Commonwealth to enforce obligations that the City has not disputed in accordance with this Section.

37. If the City objects to the disapproval, modification, or conditions in an approval of a plan, report, or other item, or portion thereof, required to be submitted to EPA and/or DEP under this Consent Decree, if the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure or on the number of days of noncompliance caused by such event, or if the City objects to the amount of Stipulated Penalties due, the City may initiate informal, good faith negotiations between the Parties to the dispute for a period of up to thirty (30) days from the time the City gives notice of the existence of the dispute to EPA and DEP. The period for negotiations may be extended by agreement of the Parties.

38. In the event that the City elects to invoke Dispute Resolution according to this Section, the City shall do so by giving EPA and DEP written notice of the existence of the dispute within fifteen (15) days after receipt of a notice of disapproval, approval with conditions or modification, a Force Majeure determination by EPA and/or DEP as appropriate, or a written demand for payment of Stipulated Penalties. If the City fails to give such notice, it shall be deemed to have waived any right to invoke the Dispute Resolution provisions of this Section regarding such dispute, and the position advanced by the EPA and/or DEP shall be considered binding.

39. In the event that the Parties cannot resolve any such dispute by informal negotiations under the preceding two Paragraphs, then the position advanced by EPA and/or DEP, as specified by this Consent Decree, shall be considered binding unless, within twenty-one (21) days of the end of the informal negotiation period, the City files a petition with this Court setting forth the matter in dispute, the efforts of the Parties to resolve it, and the relief requested. EPA and/or DEP shall then have thirty (30) days to respond to any such petition.

40. In proceedings on any dispute regarding a delay in performance as set forth in Paragraph 33, the City shall have the burden of proving: (1) that the delay or noncompliance is or was caused by a Force Majeure event, and (2) that the amount of additional time requested is necessary to compensate for that event. In no event shall the time for performance be extended for a period longer than the actual delay resulting from the Force Majeure event.

41. Notwithstanding the preceding Paragraph, in all disputes under this Section, the City shall have the burden of proving, based upon the administrative record, that the United States' and DEP's position is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. EPA or DEP shall maintain the administrative record of the dispute, which

shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

42. If EPA's and/or DEP's disapproval or modification of a plan, report, or other item, or portion thereof, is upheld or becomes binding after Dispute Resolution, Stipulated Penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XII (Stipulated Penalties).

43. If EPA's and/or DEP's approval with conditions of a plan, report, or other item, or portion thereof, or a Force Majeure determination becomes binding or upheld after Dispute Resolution, Stipulated Penalties shall accrue for such violation from the date on which the City first failed to comply with a submission deadline or first failed to implement any remedial requirements in a plan, report, or other item approved by EPA and/or DEP.

44. If the EPA's and/or DEP's determination of the amount of the Stipulated Penalties becomes binding or upheld after Dispute Resolution, Stipulated Penalties which have accrued during the pendency of the dispute shall be payable, as set forth in Section XII, upon resolution of the dispute.

XV. RIGHT OF ENTRY

45. EPA and DEP and their contractors, consultants, and attorneys shall have authority to enter any property owned and/or controlled by the City, at all reasonable times, upon proper identification, for the purposes of monitoring the progress of activity required by this Consent Decree, verifying any data or information submitted to EPA or DEP under this Consent Decree, and assessing the City's compliance with this Consent Decree. This requirement is in addition to, and does not limit, EPA's or DEP's authority pursuant to the CWA, the Massachusetts Act, or any other provision of state or federal law or regulation.

XVI. FORM OF NOTICE

46. Submissions and notices required by this Consent Decree to EPA, the U.S.

Department of Justice, DEP, and/or the Massachusetts Attorney General's Office shall be made in writing to the following respective addresses, unless written notice is given that another individual has been designated to receive the submissions and notices. Any submission or notice required by this Consent Decree must be received by EPA, the U.S. Department of Justice, DEP, and/or the Massachusetts Attorney General's Office, as appropriate, upon the due date specified in the Consent Decree. Notices to the City may be made to the following respective addresses, unless written notice is given that another individual has been designated to receive the notices.

As to the Department of Justice

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, DC 20044

As to the United States Attorney

Karen Goodwin
Assistant United States Attorney
Office of the United States Attorney
1550 Main Street, U.S. Courthouse, Room 310
Springfield, MA 01103

As to the EPA

George Harding, P.E.
Environmental Engineer
Water Technical Unit (SEW)
U.S. Environmental Protection Agency, Region 1
One Congress Street
Boston, MA 02114-2023

Man Chak Ng
Senior Enforcement Counsel
Office of Environmental Stewardship (SES)

U.S. Environmental Protection Agency, Region 1
One Congress Street
Boston, MA 02114-2023

Reports, plans, and other items required to be submitted by the City to EPA pursuant to Sections VII, VIII and X shall be submitted to George Harding, with a copy of the transmittal letter only to Man Chak Ng. The City shall provide complete copies to both George Harding and Man Chak Ng of all other submissions and notices required to be made by the City to EPA pursuant to this Decree.

As to the Massachusetts DEP

Kurt D. Boisjolie
Senior Environmental Engineer
Massachusetts Department of Environmental Protection
Western Region
436 Dwight Street
Springfield, MA 01103

Section Chief
Division of Water Pollution Control
Massachusetts Department of Environmental Protection
Western Region
436 Dwight Street
Springfield, MA 01103

Jeanne Thompson, Esq.
Senior Regional Counsel
Massachusetts Department of Environmental Protection
Western Region
436 Dwight Street
Springfield, MA 01103

The City shall provide complete copies to both Kurt D. Boisjolie and the Section Chief of the Division of Water Pollution Control of all submissions and notices required pursuant to this Decree. The City shall provide Jeanne Thompson only with copies of all submissions and notices required under Section XIV (Dispute Resolution).

As to the Massachusetts Attorney General's Office

Siu Tip Lam, Esq., Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

As to the City of Chicopee, Massachusetts

Michael Bissonette
Mayor
Market Square
Chicopee, MA 01013

47. All written notices, reports or any other submissions required of the City by this Consent Decree shall contain the following certification by a duly authorized representative of the City:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

XVII. EFFECT OF SETTLEMENT

48. This Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves the City of its responsibilities to comply with all applicable federal, state, and local laws and regulations, nor shall it be construed to constitute EPA and/or DEP approval of any equipment or technology installed by the City under the terms of this Consent Decree.

XVIII. RESERVATION OF CLAIMS AND DEFENSES

49. This Consent Decree does not limit any rights or remedies available to the United States or the Commonwealth of Massachusetts for any violation by the City of the CWA, the Massachusetts Act, and associated regulations or permit conditions other than those civil violations alleged in the Complaints through the Date of Lodging. This Consent Decree does not limit any rights or remedies available to the United States or the Commonwealth of Massachusetts for any criminal violations. This Consent Decree does not limit the standing of any person under Section 505 of the CWA to sue for any future violation of the CWA not addressed by this Decree. The United States and the Commonwealth of Massachusetts expressly reserve all rights and remedies, legal and equitable, available to each of them for all violations of the CWA, the Massachusetts Act, or other applicable law where such violations are not alleged in their respective Complaints, and reserve all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree. Nothing herein shall be construed to limit the power of the United States or the Commonwealth of Massachusetts, consistent with their respective authorities, to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public's health or welfare, or the environment.

50. This Consent Decree does not resolve any claims for contingent liability under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The United States specifically reserves any such claims against the Commonwealth, and the Commonwealth specifically reserves all defenses to any such claims.

XIX. COSTS

51. Each party shall bear its own expenses, costs and attorney's fees in this action. The City shall be responsible for all expenses, costs and attorney's fees incurred by the United States and the Commonwealth in collecting any outstanding penalties due under Sections VI and XII of this Consent Decree and in enforcing the requirements of this Consent Decree, unless the City prevails before a court in any Dispute Resolution brought pursuant to Section XIV. In no event shall the United States or the Commonwealth be responsible for any expenses, costs or attorney's fees incurred by the City.

XX. RETENTION OF JURISDICTION

52. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree and to assess any Stipulated Penalties that may have accrued during the term of the Decree. This Paragraph does not constitute a waiver of the bar to judicial review of administrative decisions, including, but not limited to, approval of plans and other submissions, and permitting decisions.

XXI. MODIFICATION

53. Any material modification to the terms of this Consent Decree shall be by written agreement of the Parties and approval of the Court, provided however that, without otherwise altering the obligations of the Consent Decree, (a) the Parties may by written agreement modify the schedules specified in this Decree, and (b) EPA and DEP may approve submissions upon specified conditions or modify submissions, subject to the City's rights to Dispute Resolution in Section XIV.

XXII. FUNDING

54. Performance of the terms of this Consent Decree by the City is not conditioned on the receipt of any federal or state grant funds or loans. In addition, performance is not excused by the lack of federal or state grant funds or loans.

XXIII. SEVERABILITY

55. The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

XXIV. TERMINATION

56. The Court shall terminate this Consent Decree upon joint motion of the Parties after the City has paid in full all penalties obligated under Sections VI and XII of this Consent Decree, and the City has completed all remedial measures, including implementing the Long-Term CSO Control Plan under Paragraph 12 approved by EPA and DEP, required under Section VII of this Consent Decree.

XXV. FINAL JUDGMENT

57. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XXVI. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

58. The City hereby acknowledges receipt of the Complaints and waives service of the summonses pursuant to Rule 4 of the Federal Rules of Civil Procedure.

XXVII. PUBLIC COMMENT

59. The City consents to the entry of this Consent Decree without further notice. Final approval of this Consent Decree is subject to the public notice requirements of 28 C.F.R.

§ 50.7. After reviewing the public comments, if any, the United States shall advise the Court by motion whether it supports entry of the Consent Decree.

XXVIII. APPENDICES

60. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is DEP’s letter dated September 3, 2004 approving the WPCF bypass disinfection project’s plans and specifications submitted by Chicopee in July 2004.

“Appendix B” is a set of interim limits and monitoring requirements for the WPCF Secondary Treatment Bypass.

“Appendix C” is DEP’s letter dated December 8, 2003, approving the plans and specifications for the CSO 9 modification project submitted by Chicopee in October 2003.

“Appendix D” is a set of interim limits and monitoring requirements for the Jones Ferry (Area 7) CSO Satellite Treatment Facility.

“Appendix E” is titled “Elements of the Long Term CSO Control Plan for the City of Chicopee, Massachusetts.”

Judgment is hereby entered in accordance with the foregoing Consent Decree this _____ day of _____ 2006.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Chicopee*.

For Plaintiff UNITED STATES OF AMERICA

Sue Ellen Wooldridge
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

United States Attorney
District of Massachusetts

Karen Goodwin
Assistant United States Attorney
1550 Main Street, U.S. Courthouse, Room 310
Springfield, MA 01103
Tel: (413) 785-0269
Fed. Bar No. _____

Date

Granta Nakayama
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date

Stephen S. Perkins
Director, Office of Environmental Stewardship
United States Environmental Protection Agency,
Region 1
One Congress Street
Boston, MA 02114

Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Chicopee*.

For Plaintiff-Intervenor COMMONWEALTH OF MASSACHUSETTS

By its attorney,

THOMAS F. REILLY
ATTORNEY GENERAL

Siu Tip Lam, BBO #567383
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Chicopee*.

For Defendant CITY OF CHICOPEE

Michael D. Bissonnette
Mayor
City of Chicopee
Market Square
Chicopee, MA 01013

Date